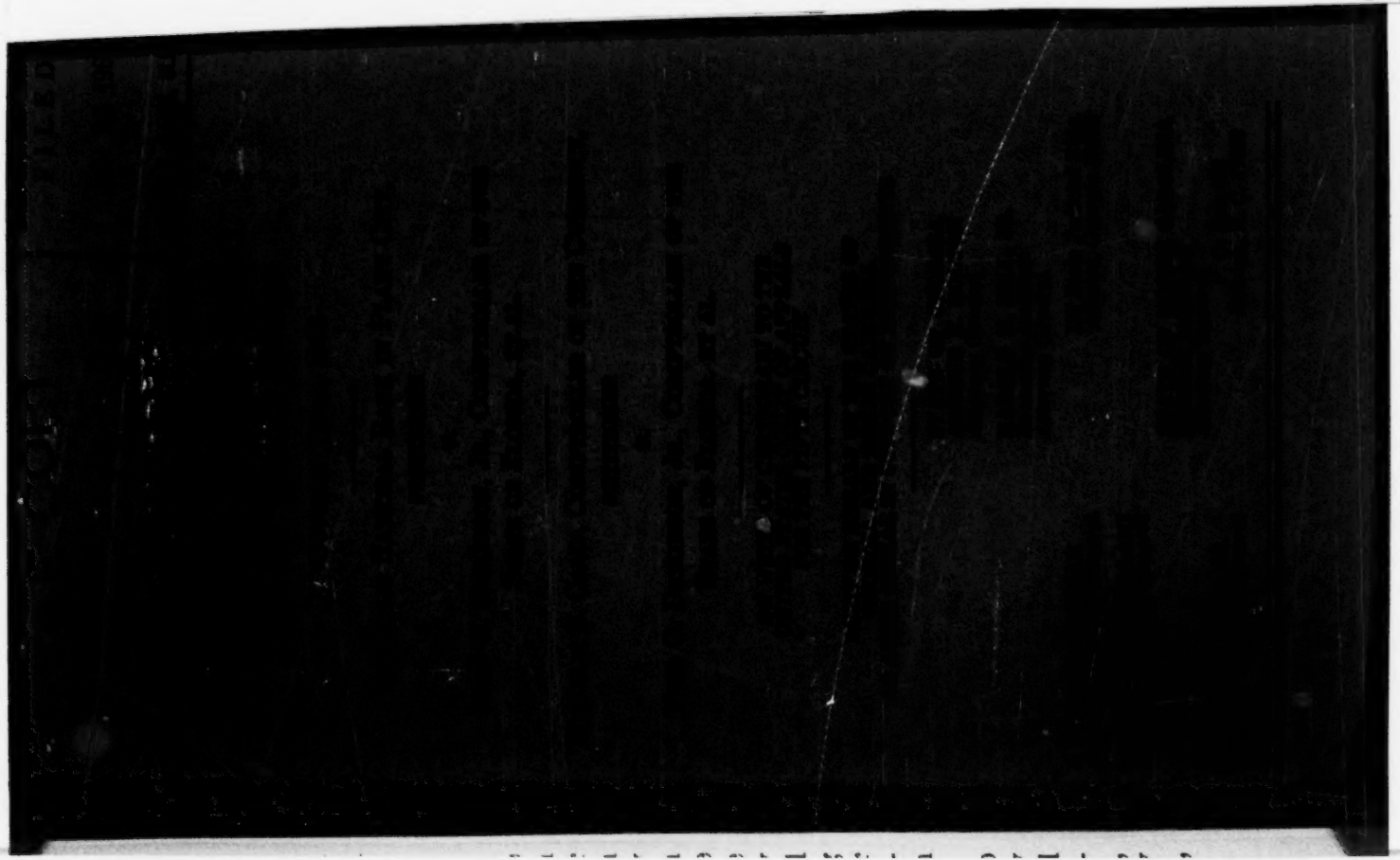

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In The Supreme Court of the United States

OCTOBER TERM, 1968

THE FIRST NATIONAL BANK IN PLANT CITY,
PETITIONER
v.
FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, ET AL.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY,
PETITIONER
v.
FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA. ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE STATES OF GEORGIA AND NORTH CAROLINA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

This brief is filed by the States of Georgia and North Carolina pursuant to permission granted by Rule 42(4) of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED, STATUTES INVOLVED, STATEMENT OF THE CASE

We adopt the sections in Respondents' brief which set out the question presented, statutes involved and statement of the case.

INTEREST OF AMICI CURIAE

Both States have several interests in the case. First, each State has laws which restrict, to some degree, branch banking in the State.

Secondly, each State presently has the problem of a national bank operating a mobile banking service in its jurisdiction in violation of the State branching laws. The same bank is operating in both States and the issue is presently on appeal to the 5th Circuit, having been decided favorably to the States by the District Court.

Finally, both States hope to allay any intimation that Georgia or North Carolina has any wish to curtail the legal activities of *any* bank, national or state. We emphasize to the Court that our only desire is to administer the law in the same spirit and with the same intent as the Congress and our State legislatures have enacted it.

ARGUMENT

REGARDLESS OF WHICH DEFINITION OF "BRANCH BANKING" THE COURT APPLIES IN THIS CASE, THE ACTIVITIES OF A TYPICAL MOBILE BANKING SERVICE CONSTITUTE BRANCH BANKING.

We have little doubt that the able counsel on both sides of this issue will adequately present to the Court the questions of law. We appear in this case to set forth the facts of an actual operation of a mobile banking service so that the Court may better understand the context of the problem.

It is most important to remember that the following operation is conducted over an area covering 10 counties and 2 states. We do not hazard a guess at the lengths to

which this operation could extend. The facts are taken from the findings of fact set out by the District Court in *Jackson v. First National Bank of Cornelia*, 292 F. Supp. 156 (N.D. Ga. 1968).

Relying on paragraph 7490 of the Comptroller's Manual, the bank purchased three armored trucks. Each has a driver's compartment and rear compartment. Two of the trucks have a large plate glass window in the side of the rear compartment together with a pass-through drawer to the outside of the vehicle. Each truck is equipped with a two-way radio, periodically used to dispatch orders pursuant to customers' telephone requests received at the bank after the truck has already left the banking house and for emergency purposes. The employee operating each truck is armed with a pistol.

The messenger service is operated daily, six times a week. The armored truck is owned by the bank and is operated by employees of the bank. The bank also purchased the insurance coverage for the operation. Customers are not charged for the service. The bank's armored trucks call on 235 customers at least once a week, 220 customers four times a week and approximately 50 customers six times a week.

The following transactions are conducted by the bank's mobile service:

(a) *The Transmittal of Funds to the Bank:*

The armored truck banking service is provided to call at a customer's place of business to pick up cash and checks for the purpose of transporting them to the bank's banking house, where they are deposited to the customer's account. The customers who use the service have

accounts with the bank. Prior to using the service, they signed a "Messenger Service Agency Contract" which provided that the bank's messenger transports the monies and checks to the banking house as the agent of the customer. When a customer send funds to the bank, he accompanies them with a transmittal slip on which he itemizes them. The transmittal slip contains a "Contract" which provides that the bank "messenger" is acting as the agent of the customer, and that the currency, coins and checks transmitted by messenger to the bank's premises will not be deemed to be a deposit until delivered by the messenger into the hands of a teller on the bank's premises. Both the transmittal slip and the messenger service agency contract provide that the bank is maintaining hazard insurance for the protection of the customer.

(b) *The Making of Change:*

Each armored truck carries between $2,000 and $3,000 in small bills and coins belonging to the bank. A customer using the service may, when the armored truck calls, have large bills changed into smaller bills or coins. Such a transaction does not involve checks, but is the exchange of cash for cash.

(c) *The Transmittal of Funds from the Bank:*

The service is also used to transport cash to those customers who have signed the "Messenger Service Agency Contract." The contract provides that in this situation, also, the bank's messenger is acting as the agent of the customer. Sums transported to the customer by this method are withdrawn by an "Authorization of Debit" or a withdrawal slip and the sums are accompanied by

a receipt slip indicating that the customer's account has been charged for the amount of the order. A common use of this service is the delivery of currency and coins to be used as change by businesses.

(d) *The Furnishing of a Teller's Service for Payroll Cashing:*

The bank also uses the armored truck to provide a payroll cashing service to certain of its customers outside the city limits of Cornelia, Georgia. In such instances, funds are delivered by the service to the customer's place of business pursuant to a written order form. For delivery, a teller accompanies the driver of the armored truck. When the funds are delivered, the teller accompanies the messenger into the customer's place of business and, at a counter set by the customer, cashes the payroll checks of the customer's employees, which are drawn not only on defendant bank but on other banks as well.

We believe that a consideration of these facts will readily show that regardless of which definition of "branch banking" the Court applies in this case, there can be little question that the activities of a mobile banking service are the life-blood functions of banking and they would constitute the operation of a branch bank.

CONCLUSION

The judgment of the United States Court of Appeals for the 5th Circuit should be affirmed.

Respectfully submitted,

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